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## Wisconsin Karner Blue Butterfly Habitat Conservation Plan and Environmental Impact Statement

### **Appendix C. History of Wisconsin Karner Blue Butterfly HCP Partnership, Articles of Partnership and Partnership Anti-Trust Policy**

This appendix provides a brief historical overview of the Wisconsin Karner Blue Butterfly HCP partnership effort. It also provides information on the institutional framework on which the HCP partnership has been based since its inception (i.e. the Articles of Partnership) and compliance with anti-trust laws.

#### **A. History of Wisconsin HCP Partnership**

The USFWS listed the Karner blue butterfly as an endangered species in December 1992. This listing extended protection and recovery provisions of the ESA to the Karner blue butterfly and made it unlawful to conduct activities which would result in "take" of this butterfly. Several current and planned land uses and management processes have the potential of resulting in take as defined in the ESA.

In February 1994, representatives of Georgia Pacific Corporation visited with key Wisconsin DNR administrators and staff members to discuss whether or not the DNR would help with the construction of a statewide HCP for the Karner blue butterfly. Georgia Pacific officials were planning to talk to USFWS staff and were interested in exploring the concept further with DNR. The company was interested in constructing an HCP as efficiently as possible and wanted to know what DNR's role could be in such a process.

A short time later, DNR staff met with USFWS Region 3 staff. USFWS staff challenged DNR personnel to "take the lead in the Wisconsin HCP process." DNR staff then met internally to determine which interested parties might be involved. A series of meetings to discuss what procedures and objectives could be outlined to complete the HCP followed. These meetings, involving forest products companies, several utilities, conservation organizations, and state and federal agencies led to the establishment of the HCP Articles of Partnership. These articles served as the process rules for the series of meetings at which the issues involving completion of the HCP were discussed and decided.

Beginning in the fall of 1994 and extending into 1998, HCP partnership meetings were held on a regular basis to provide direction for the development and drafting of the HCP, implementing agreement, individual partner species and habitat conservation agreements, appropriate guidelines and protocols, and other associated documents.

## **B. Articles of Partnership**

The HCP partners established Articles of Partnership to serve as process rules for the development and implementation of the statewide HCP. These articles are reproduced below.

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### **Articles of Partnership Karner Blue Butterfly Habitat Conservation Plan/Incidental Take Permit**

#### Mission

##### **1. Mission**

Development of a statewide conservation plan for the Karner Blue butterfly that integrates conservation with economic and other land uses through a partnership among affected stakeholders sharing their collective knowledge and experience. This plan will provide the basis for the application to the U.S. Fish and Wildlife Service for a statewide incidental take permit for the Karner blue butterfly.

##### **2. Goals:**

Focus primarily on the conservation of the Karner blue butterfly.

Develop an ecologically and economically sound solution integrating Karner Blue butterfly conservation with economic and other land uses acceptable to the citizens of Wisconsin and the owners and managers of public and private lands (including the working landscape).

Encourage multiple species and barrens ecosystem management planning for those ownerships where such measures are desirable and feasible and acceptable by the landowners.

Assure, on a landscape basis, no-net-loss of Karner Blue habitat attributable to land use that would otherwise be legal.

Use the most current scientific data to quantitatively identify the known and probable

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distribution of the Karner Blue on the Wisconsin landscape by ecological community and ownership category.

Ensure the planning team communicates with the Karner blue recovery team pertaining to recovery goals throughout its planning process. The recovery team will provide the planning team 1) the quantitative definition of viable population for the Karner blue; 2) the quantitative definition of metapopulation; 3) recovery goals for Wisconsin; and 4) other information pertinent to the conservation of the Karner blue.

Develop a mitigation strategy to compensate for the "take" of the Karner blue butterfly.

Provide for individual landowner participation in the development of management strategies and practices on a given working landscape which will allow flexibility in arriving at workable solutions.

Develop a legally binding agreement among all partners who wish to participate in and abide by the terms of the HCP.

Provide for Karner blue metapopulation dynamic on landscapes managed to maintain the necessary dynamic processes. This represents a shift from the traditional emphasis on protection of individual organisms on fixed tracts of land.

3. The Karner Blue butterfly "habitat conservation plan" (HCP) will incorporate sound science, societal needs and economics.
4. An approved statewide HCP will facilitate the granting of an "incidental take" permit necessary for the non-federal public and private lands (including the working landscape).
5. The HCP will detail landscape linkages and cooperative efforts between management and conservation programs on non-federal lands and those on federal lands. (see 11/3 Draft)
6. The Karner Blue butterfly is the focus of a statewide HCP which attempts to minimize and mitigate the impacts of incidental take; creation of a statewide HCP will not prevent the management or recovery of other species. It shall be a collaborative process designed, consistent with these Articles, to include all interested parties.

Description of Partnership

7. Partners are those persons, agencies or organizations:
  - a. Entering into and agreeing to these Articles of Partnership; and
  - b. Have an ownership interest i.e. fee title or easement in land with existing or potential Karner Blue butterfly habitat; or
  - c. Have an economic interest at risk as a result of the listing of the Karner Blue butterfly as endangered; or
  - d. Has a role in implementing the HCP e.g. ASCS, municipalities.

The status as a "Partner" will be determined by the administrative committee assigned after consideration of the letter of subscription submitted and supporting the party's eligibility. A Partner may withdraw by letter of request.

8. Consensus in the partnership process, whether partners or not, will be the goal in making decisions or determining direction. Where consensus cannot be reached, the partners present shall determine. The vote of a minimum of three-fourths (3/4's) of the partners present plus one is necessary to support a decision. All partners are equal in this development process, and have an equal vote. Partners may designate proxies.
9. Persons or organizations other than partners are invited and encouraged to participate in the HCP process. Their opinions and advice will be considered.
10. Noncompliance with the Articles of Partnership shall result in the Partner's forfeiting partnership status and the rights to vote under Article 8.
11. The Administrator of the Partnership shall be the Wisconsin Department of Natural Resources. Their role shall include, coordination and facilitation of the process, provision of administrative support, oversight of the process, principle drafter of all applicable documents related to the permit, including National Environmental Policy Act (NEPA) documents, applicant for the incidental take permit and implementation and oversight of activity under the permit and in accordance with the implementation agreement, all consistent with the direction of the Partnership and approval of the Natural Resources Board. The Department's role as partner will be consistent with this agreement and in furtherance of conservation of endangered species.
12. The U.S. Fish and Wildlife Service shall be invited and encouraged to serve in an advisory capacity to the process.

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### Rules of Procedure

13. All meetings of the Partnership shall be noticed and held as public meetings. Participants, as defined in Article 16c, may provide advice and shall be involved in the business of the meetings consistent with Article 8.
14. A minimum of two-thirds (2/3) of the partners shall be present at a meeting to constitute a quorum to vote on an issue under Article 8.
15. Meetings of the Partnership will be held at a variety of locations in the state. Dates and times of meetings will be determined by the Partnership, Committees, Subcommittees or Teams. Arrangements will be made by the Coordinator.
16. Meetings shall be subject to the following:
  - a. The HCP Coordinator is responsible for meeting minutes. A note taker, or the method of recording the discussion and decisions made at a meeting, shall be the responsibility of the Coordinator. Comment periods and requests for information in the minutes shall be consistent with direction of the Partnership, if given. Minutes shall be prepared and distributed to the Partnership, and others attending the meeting. The minutes should be routinely distributed within ten (10) working days from the meeting. They shall be routinely reviewed, amended if necessary, and approved at the following meeting.
  - b. Committees, Subcommittees or Teams may establish review or comment periods for their membership or the Partnership.
  - c. Participants in the process, other than the Partners, shall be provided meeting minutes. Participants include:
    - (1) Those who serve in an advisory capacity; or
    - (2) Those who have a scientific interest in protection and recovery of the Karner Blue butterfly; and
    - (3) those who are fully involved in discussions during the plan development and implementation. Participants are expected to attend and be prepared for meetings.
  - d. Other persons interested in this conservation effort, upon request, and consistent with the Communications Plan, shall be provided with regular mailings on the development and implementation of the HCP and incidental take permit.
17. The Articles of Partnership, the Mission or Goals may be amended by a two-thirds vote of the

Partners.

18. The proposed HCP, or any portion of it, including modifications, may not be acted on by the Partnership prior to a thirty (30) day review.
19. Communications and public information, including press releases, shall be consistent with a public information plan or release agreed upon by the Partnership. This provision does not restrict the release of information subject to and consistent with the Public Records Law, Ch. 19, *Wis. Stats.*
20. Proposed policies or documents of the Partnership may not be acted upon by the Partnership without the opportunity of thirty (30) days review, unless agreed upon by the Partners present at a noticed meeting.
21. Meetings which have been noticed may be cancelled in the event of weather, unavailability of facilities or upon agreement by a minimum of twenty-five (25) percent of the Partners.
22. Meetings, other than agreed upon by Partners present at a noticed meeting, shall be held upon request of forty (40) percent of the Partners.
23. The agenda for each meeting will be decided by the parties at the preceding meeting. Agenda items may be added to or dropped by agreement at the beginning of the meeting which the proposed agenda applies.

Conservation Plan Formulation

24. A time table, with objectives and deadlines, shall be created to guide development of a Conservation Plan. All reasonable efforts shall be taken by the Partners to complete the Plan and their assigned tasks consistent with the time table.
25. The Habitat Conservation Plan shall be developed with the rights of private property owners in mind and seek to protect those rights.
26. The Karner Blue HCP shall include and incorporate a public information component designed to effectively inform and update all interested persons on the development of an HCP and application for an incidental take permit.
27. The Conservation Plan process shall include a monitoring component consistent with plan development, direction and an agreed upon implementation agreement.

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28. The Partnership in development of a Conservation Plan has no responsibility to the Recovery Plan; however, an open and clear line of communication between the recovery team and this Partnership will be maintained for the exchange of technical information.
29. The Karner Blue HCP shall be statewide in scope, with reasonable and prudent goals, incorporating an incentive based approach to assure its broad and effective application in Wisconsin.

#### Ongoing Land Management

30. Reasonable management operations on the lands consistent with conservation of the Karner Blue are not discouraged. Necessary coordination with the U.S. Fish and Wildlife Service will be maintained and application for permits considered and supported by the Partners.

#### Data Sharing

31. a. Data provided by the Department of Natural Resources and which constitutes Natural Heritage Inventory data, may not be used for any purpose other than development of the Conservation Plan or conducting of activities under an incidental take permit. It may not be released or made available to any other person, agency or organization for any purpose unless agreed to in writing by the Department of Natural Resources.
- b. Data provided to the Department of Natural Resources is subject to Wisconsin's Public Records Law, Ch. 19, *Wis. Stats.*, and subject to that law regarding requests for it. Under s.23.27(3), *Wis. Stats.* NHI information is considered confidential and release or use of it is controlled by the Department and administrative rules adopted to administer the NHI program.

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## C. Anti-Trust Policy

Several of the Wisconsin Karner Blue Butterfly HCP partners are engaged in the same or similar business activities. In fact, some are competitors. Whenever there are discussions among entities involved in similar activities or businesses, there is a concern whether or not an opportunity is, or might be, created to control prices by controlling the availability of products. A violation of the federal anti-trust prohibitions (15 USC, ss. 1, *et seq.*) may occur even though unintended and no matter how noble the cause of a given project.

To assist in addressing this concern regarding anti-trust laws, the HCP Partnership developed an Anti-trust Policy under which the partners would operate. The policy was distributed and announced at all HCP meetings. The policy is reprinted below.

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### Anti-trust Policy

The conduct of this assembly is in no way intended to present any federal or state anti-trust problems. However, the operation of this assembly requires that representatives of member organizations meet together, and since these member organizations in the normal course of business may be competitors, it is deemed advisable to set forth this policy with regard to Anti-trust Compliance.

The uncompromising policy of this assembly is:

STRICT COMPLIANCE WITH THE SPIRIT AND THE LETTER OF THE Anti-trust LAWS.

In furtherance of this policy, the following rules are adopted to provide those assembled today with precepts to guide them in their conduct.

NO ACTIVITY OR COMMUNICATION SHALL:

1. be used for the purpose of bringing about or attempting to bring about any understanding arrangement or agreement, written or oral, formal or informal, express or implied, directly or indirectly, among competitors with regard to (a) prices, terms or conditions of sales, distribution, volume, production, territories or customers, or (b) prices or purchases of any materials, equipment, services of supplies, or suppliers.



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2. include discussion, directly or indirectly, for any purpose or any fashion regarding (a) sales prices or pricing methods, production quotas or other limitations on either the timing or volume of production or sales or allocation of products, territories or customers, or (b) purchase prices or pricing methods, purchasing quotas or other limitations on either the timing or volume of purchases or allocation of purchases of materials, equipment, services or supplies or allocations of territories or suppliers.
  3. include any discussion which might be construed as an attempt to prevent any person or business entity (a) from gaining access to any market or customer for goods or services, or (b) from obtaining a supply of goods or otherwise purchasing goods or services freely in the market.
  4. make any effort to bring about the standardization of any product for the purpose of or have the effect of preventing the manufacture, sale or purchase of any product not conforming to a specified standard.

In all discussions, formal or informal, all assembled are expected to observe and conduct themselves in accordance with these rules and in compliance with all anti-trust laws and regulations, both federal and state.

Persons invited to participate in or giving presentations shall be advised of the need to comply with these rules and applicable laws and regulations.

It is the responsibility of all assembled to comply with the letter and spirit of these rules, and with all applicable state and federal anti-trust laws.

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